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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,526

09/29/2003

James Darrin Davis

CN 3764

1191

2128 7590 01/16/2007
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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/672,526

Applicant(s)

DAVIS, JAMES DARRIN

Examiner

Gregory W. Adams

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, as required by claim 4 the dog leg rod axel end, dog leg rod outer end and a dog leg concave region adjacent to a attaching frame lower end must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 4, 9 & 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Smith et al. (US 2002/0168257) (previously cited).

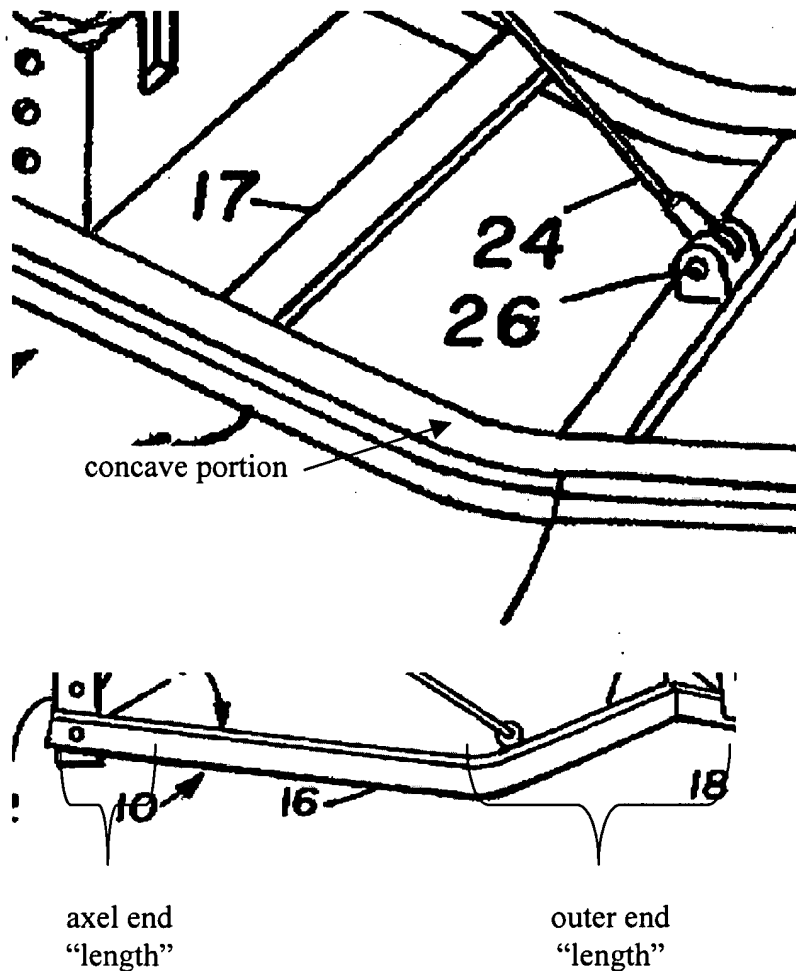
With respect to claims 4, 9 & 14, Smith et al. disclose a deer-carrier rack comprising an attaching frame 12 configured for attaching in an upright orientation (FIG. 2) to an end of an all-terrain vehicle, the attaching frame having a lower end and an upper end; and a deer support frame comprising spaced apart left 16 (or 15) and right 15 (or 16) generally co-extensive elongate dog leg rods, each of the rods having an axel end (see below) rotatably attached to the lower end of the attaching frame 12 for generally upward and downward rotation of the deer support frame relative thereto, and an outer end (see below) opposite the axel end and spaced from the lower end of the attaching frame, the outer end of each of the rods having a length which is at least two times greater than a length of the axel end thereof, and the axel ends of the rods forming a concave region adjacent to the lower end of the attaching frame, the concave region being configured and oriented so as to face upwardly while extending downwardly to the outer end of the rod when the attaching frame is attached in the upright orientation to an end of an all terrain vehicle and the deer support frame is rotatably positioned relative thereto in a deployed position extending outwardly

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therefrom, the upwardly facing concave region being having a flat outer end which smoothly transitions into the outer end of the rods forming an at least substantially flat, unobstructed platform configured for receiving a body of a deer thereon such that the deer support frame with a body of a deer received on the flat platform can be rotated upwardly from the deployed position to an upright position wherein the outer ends of the rods extend at least generally vertically and the concave region is spaced outwardly from the lower end of the attaching frame for supporting the body of a deer thereagainst without pinching the body of the deer. during the upward rotation, and such that the deer support frame in the upright position can be secured to the attaching frame or the all terrain vehicle for holding the body of the deer against the lower end of the attaching frame.

While Applicant claims an axel end having a concave region and also claims a length (half the length of an outer end length) Applicants figure 5 makes clear that a concave region is part of the axel end. Thus, given the broadest reasonable interpretation the Examiner interprets the axel end to include both a "concave region" and a "length" and combined they comprise the whole of the axel end. A similar analysis of Ellis follows below.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 4, 6-9, 11-14, 16-18 are rejected under 35 U.S.C. 103(a) as obvious over Ellis (US 2,930,500).

With respect to claims 4, 9, 14, Ellis does not disclose a deer-carrier rack but does disclose an apparatus which is used to lift heavy objects on to a vehicle including: an attaching frame 16, 54 configured for attaching in an upright orientation to an end of an all-terrain vehicle, the attaching frame having a lower end and an upper end; a support frame comprising spaced apart left and right generally co-extensive elongate dog leg rods, each of the rods 34, 60 having an axel end 46 rotatably attached to the lower end of the attaching frame for generally upward and downward rotation of the deer support frame relative thereto, and an outer end (indicated generally as 22) opposite an axel end and spaced from the lower end of the attaching frame, an outer end of each of the rods having a length which is at least two times greater than a length of the axel end thereof, and the axel ends of the rods forming a concave region 46 adjacent a lower end of an attaching frame, the concave region being configured and oriented so as to face upwardly (FIG. 1 dotted lines) while extending downwardly to the outer end of the rod when the attaching frame is attached in the upright orientation to an end of an all terrain vehicle and the deer support frame is rotatably positioned relative thereto in a deployed position extending outwardly therefrom, the upwardly facing concave region 46 being having a flat outer end 60 which smoothly transitions into the outer end of the rods forming an at least substantially flat, unobstructed platform configured for receiving a body of a deer thereon such that the deer support frame with a body of a deer received on the flat platform can be rotated upwardly from the

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deployed position to an upright position wherein the outer ends of the rods extend at least generally vertically and the concave region is spaced outwardly from the lower end of the attaching frame for supporting the body of a deer thereagainst without pinching an asphalt roller during the upward rotation, and such that a support frame in an upright position can be secured (indicated generally as 78) to an attaching frame for holding an asphalt roller against a lower end (indicated generally as 16) of an attaching frame.

Although Ellis does not explicitly disclose carrying deer Ellis' support frame 18 including a concave region facilitates loading of heavy equipment from ground level to a vehicle-attached hauling position that are otherwise be too heavy for unassisted lifting. C1/L15-60. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Ellis' support frame to accommodate deer as it is designed for human-assisted loading of heavy objects from ground level to a vehicle.

It is noted that a smooth transition is defined merely as being connected in an adjacent manner without which there is a gap in the surface which Ellis clearly does not disclose.

With respect to claims 6, 11 & 16, Ellis discloses rotating a support frame past vertical.

With respect to claims 7, 12 & 17, Ellis discloses a unitary member.

With respect to claims 8, 13 & 18, Ellis discloses a strap 78.

Claims 5, 10, 15 is/are rejected under 35 U.S.C. 103(a) as obvious over Ellis (US 2,930,500) in view of Smith (US 20020168257).

With respect to claim 5, Ellis does not disclose a wing piece that forms a sideward extension. Smith discloses a deer rack carrier further including a wing piece (indicated generally as 18 in FIG. 2) extending sidewardly therefrom adjacent to a concave region forming a sideward extension of the platform for cradling a load and to also assist in securing a load on an ATV rack (para. [0019]) eliminating the need for hoist booms. Paras. [0005-0006]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ellis carrier rack to include at least one wing piece extending sidewardly, as per the teachings of Smith, to better support a load during lifting.

Response to Arguments

Applicant's arguments filed November 30, 2006 have been fully considered but they are not persuasive.

Applicant claims an axel end having both a "concave region" and a "length" (a length that is at least half an outer end length) but Applicants figure 5 discloses that a concave region is not the whole of the axel end as required by claims 4, 9 & 14. Thus, given the broadest reasonable interpretation the Examiner interprets an axel end to include a length but that the length may not be as long as the axel end in total. In other words, the "length" of the axel end is a portion of the axel end in total. Both Smith and Ellis disclose an axle region having both a concave region as well as a length that is at least half as long as an outer end length.

Rigid is a relative term. The cited prior discloses rigidity by the mere fact that both are levers used to lift loads from a ground level some distance above the ground where levers have inherent rigidity.

Smooth transition merely requires that the parts not be subject to missing connections, e.g. a gap. The cited prior art clearly discloses that the parts are connected without gaps. Thus, there is a smooth transitions between a flat outer end and a concave region.

Smith's platform, e.g. that area just beyond the cable connection means 26 is unobstructed. Moreover, albeit for very small items Smith's platform could be defined as merely that surface directly above dog legs 15 (or 16) which are clearly unobstructed.

With respect to pinching a deer when an apparatus is raised to a generally vertical position, Smith's upright position is defined as some point nearing vertical but not limited to vertically upright forming a 90-degree angle with a ground surface. Applicant is merely claiming a generally vertical, upright position such that using Smith's or Ellis' rack carrier one could raise the dog leg rods until a point that pinching almost begins but still operate to carry a load. Moreover, Ellis' apparatus discloses a 90-degree vertical orientation without the possibility of pinching.

In response to applicant's argument that one would not use Ellis' rack carrier to lift deer, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, asphalt

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rollers are presumably necessitating a manual-assist lift. Deer are equally heavy. Thus, one familiar with load assists seeking to solve a problem with lifting heavy objects on to a vehicle would look no further than Ellis apparatus.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA



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